

Issue: Administrative Review of Hearing Officer's Decision in Case No. 9927, 9943;
Ruling Date: December 3, 2012; Ruling No. 2013-3490; Agency: Department of
Juvenile Justice; Outcome: No Ruling – Untimely.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

ADMINISTRATIVE REVIEW RULING

In the matter of the Department of Juvenile Justice
Ruling Number 2013-3490
December 3, 2012

On November 30, 2012, the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) received a letter from the grievant's attorney requesting administrative review of the Decision of the Hearing Officer in Case Numbers 9927, 9943. The hearing decision for that matter was issued November 14, 2012.¹ EDR received the grievant's request for administrative review on November 30, 2012. Therefore, the grievant's request is untimely and there is no just cause for the delay.

Appeals to EDR considered under section 7.2 of the Grievance Procedure Manual as administrative reviews "must be in writing, and *received by* the reviewer within 15 calendar days of the date of the original hearing decision."² The November 14, 2012 hearing decision also advised the parties that any request they may file for administrative review to EDR or the Director of DHRM must be *received* by the reviewer within 15 calendar days of the date the original decision was issued.³

EDR did not receive the grievant's request for administrative review until November 30, 2012, one day beyond the expiration of the 15 calendar-day period, making it untimely. Because EDR did not *receive* the grievant's request for review in a timely manner, it cannot be considered. Furthermore, the ruling request presents no indication of "just cause" for the delay.⁴

APPEAL RIGHTS

A hearing officer's decision becomes a final hearing decision when the 15 calendar day period for filing requests for administrative review has expired and neither party has filed such a request or once all timely requests for review have been decided.⁵ It appears that the

¹ Decision of Hearing Officer, Case Nos. 9927, 9943, Nov. 14, 2012 ("Hearing Decision"), at 1.

² *Grievance Procedure Manual* § 7.2 (emphasis in original).

³ Hearing Decision at 9.

⁴ "Just cause" is defined as a "reason sufficiently compelling to excuse not taking a required action in the grievance process." *Grievance Procedure Manual* § 9.

⁵ *Grievance Procedure Manual* § 7.2(d).

hearing decision in Case Numbers 9927, 9943 became a final hearing decision after the 15 calendar day period for filing requests for administrative review expired on November 29, 2012, as EDR is unaware of any timely requests for administrative review submitted by either party. The parties would have 30 calendar days from that date to appeal the decision to the circuit court in the jurisdiction in which the grievance arose. The basis of any such appeal must be that the final decision was contradictory to law.⁶



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Director
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⁶ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).